Supreme Court, U.S.
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No. 97-1565

In The

# Supreme Court of the United States

October Term, 1997

THE STATE OF MISSISSIPPI,

*Petitioner,*

v.

BYRON RODERICK, BILLY SAXTON and CYNTHIA SAXTON,

*Respondents.*

**On Petition For Writ Of Certiorari To The Supreme Court Of Mississippi**

## RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

Is there any jurisdiction for this Court to hear this case, a case involving the Mississippi Supreme Court's interpretation of Mississippi law and its holding of a Mississippi statute unconstitutionally void for vagueness?

If there is jurisdiction, did the Mississippi Supreme Court err in determining that the Racketeer Influenced Corrupt Organizations Act (RICO), Miss. Code Ann. §§ 97-43-3(b) and 97-43-5(3, 4) (1972) are unconstitutionally vague as applied to Mississippi's civil usury statute thus invoking the jurisdiction of this Court?

## LIST OF INTERESTED PARTIES

1. State of Mississippi, Petitioner

2. Hon. Jean Smith Vaughan, Consumer Protection Division, Office of the Attorney General of the State of Mississippi, and Counsel for Petitioner

3. Hon. Leslie Staehle, Consumer Protection Division, Office of the Attorney General of the State of Mississippi

3. Byron Roderick, Respondent

4. Billy Saxton and Cynthia Saxton, Respondents

5. Hon. Earl L. Denham, Counsel for Respondents

6. Hon. Robert H. Walker, Circuit Court Judge

Other Interested Parties:

7. Hon. Mike Moore, Attorney General of the State of Mississippi

8. City of Gulfport, Mayor Ken Combs

9. Hon. James B. Halliday, Gulfport Assistant City Attorney

10. Harrison County, Mississippi and the Harrison County Board of Supervisors, Bobby Eleuterius, President, Larry Benefield, David LaRosa, Sr., Robin Alfreda Midcalf, and C. T. Switzer, Jr.

11. Hon. Steve Simpson, Harrison County Assistant District Attorney

12. Hon. Edward O'Neal, Harrison County Assistant District Attorney

**LIST OF INTERESTED PARTIES** – Continued

13. Ed Twomey, Detective, Gulfport Police Department
14. George H. Payne, Jr., Chief of Police, Gulfport Police Department
15. Hon. William H. Jones, Attorney representing several "check cashing" businesses in Mississippi
16. Elvin J. Roberts, Check Cashing, Incorporated
17. Mississippi Check Cashing Association, Elvin J. Roberts, President, Todd Broom, Vice-President, Jackie Peterson, Secretary, Dan Robinson, Treasurer, Danny King, former president
18. Hon. Mike Frascogna, Attorney for Mississippi Check Cashing Association

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## JURISDICTION

Petitioner relies upon 28 U.S.C. § 1275 to invoke the jurisdiction of this Court. Respondent assumes that Petitioner has committed a scrivener's error in attempting to cite 28 U.S.C. § 1257. (App. - 1.)

According to 28 U.S.C. § 1257, jurisdiction of this Court is granted after final judgment or decree is rendered by the highest court of a state in the following instances: (a) where the validity of a treaty or statute of the United States is drawn in question; (b) where the validity of a statute of any State is drawn into question as being repugnant to the Constitution, treaties or laws of the United States; or (c) where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, statutes, or any commission or authority of the United States.

In the instant case, there is no dispute regarding the validity of a treaty or statute of the United States. As to the validity of a state statute, the Mississippi Supreme Court examined the use of Mississippi's civil usury law as the predicate "crime" for an indictment under the Mississippi RICO statute and held that the application of the Mississippi RICO statute to the Mississippi civil usury law would criminalize activity not previously criminal under Mississippi statutes without fair notice and definite warning of the prohibited conduct. Such a finding is clearly not repugnant to the Constitution, treaties or laws of the United States. Finally the record is clear that this matter does not involve any title, right, privilege, or immunity protected by the Constitution, treaties, statutes,

or any commission or authority of the United States. This Court does not have jurisdiction in this matter.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

Petitioner sets forth 18 U.S.C. § 1962 in its declaration of the constitutional and statutory provisions which are to be reviewed by this Court. This citation, however, is also erroneous as the Respondents were not indicted under the federal RICO Act, nor did the Mississippi Supreme Court or the trial court find it necessary to rely upon the federal RICO Act for guidance to determine the constitutionality of Petitioner's utilizing Mississippi's civil usury law as the basis for a criminal indictment of Respondents under Mississippi's RICO Act. As the record clearly demonstrates, the Petitioner's sole reference to federal RICO during argument before the lower court was to inform the lower court that Mississippi RICO is similar to federal RICO. No federal statute played any role in the history of this case. The decision turned on state law as interpreted by the Mississippi Supreme Court, which held that under the peculiar circumstances of this case and given the interpretation of Mississippi statutes concerning usury, the state RICO statutes, Miss. Code Ann. §§ 97-43-3(b) and 97-43-5(3, 4) (1972), are constitutionally void for vagueness when used by the State to attempt to criminalize usury, a civil offense in Mississippi. (Pet. App. - 43.)

## STATEMENT OF THE CASE

Respondent, BYRON RODERICK, a businessman from Jackson, Mississippi, opened a check cashing service in Gulfport, Mississippi. He leased a location, raised the necessary start-up cash, and hired Respondents, BILLY SAXTON and CYNTHIA SAXTON, to open and manage the business which was known as "We Cash It". The business purchased a license from the City of Gulfport in September of 1993 and advertised itself. The purpose of the business was to provide discounted cash for a customer's check with the customer allowed fourteen to sixteen days to redeem the check. If the customer chose not to redeem the check, then "We Cash It" would deposit the customer's check. Although customers were not required to pay interest, a one-time fee was charged for the service. Customers sometimes post-dated checks which they tendered to the business.

The check cashing industry was at the time of the alleged crime unregulated by the State of Mississippi but flourishing statewide. The Mississippi Attorney General's office (including Leslie Staehle and Jean Smith Vaughan in their capacities as Special Assistant Attorneys General), the Legislature, and the Check Cashing Association were meeting regularly to discuss and negotiate legislative regulation of the fledgling industry prior to and during the time Respondents were in business. (R - 20-21, 110-112, 114-115.) Testimony from various witnesses was presented to the lower court regarding conversations and meetings with the Check Cashing Association, the district attorney, various members of the Attorney General's office, the legislative Banking Committee, and Attorney General Mike Moore. (R - 71, 83-85, 108-111, 114, 118-126.)

During cross-examination, Special Assistant Attorney General Jean Smith Vaughan acknowledged that the meetings occurred. Because of the State's interest in regulating check cashing, Roderick and others in the business repeatedly tried to obtain and did obtain guidance from the Attorney General's office regarding the legality of the business prior to opening.

However, after "We Cash It" opened for business an investigation by the City of Gulfport Police Department ensued utilizing information and testimony provided by, of all people, Special Assistant Attorney General Leslie Staehle. On October 22, 1993, eight police officers raided the premises of "We Cash It" with a search warrant based on Staehle's "interpretation" of Mississippi's RICO statute. The police officers meticulously went through everything on the premises, including a fast food lunch bag containing a hamburger. Except for a few large pieces of furniture, the police seized nearly everything on the premises, including all checks, business documents, video tape machines, calculators, telephones, filing cabinets, and even the hamburger, causing a total shutdown of the business. Roderick and the Saxtons could not continue to operate the business without their business records. The destruction of the business was one obvious intent of the search.

Despite numerous telephone calls by Respondents' counsel during which the police maintained that there was no ongoing investigation in progress, the confiscated property was not returned until November 9, 1993, when furnishings and equipment of the office, minus the negotiable instruments, were returned to the Respondents. Without the checks the business completely failed.

On August 19, 1994, Respondents, Byron Roderick, Billy Saxton, and Cynthia Saxton were indicted by the Grand Jury of Harrison County, Mississippi, on two counts of alleged violations of Mississippi RICO (not three counts as is alleged by the Petitioner). (Pet. - 3; Pet. App. - A-48 - A-52.) The statute upon which the underlying predicate "crime" of usury was based was not cited in the indictment.

On March 23, 1995, the Petitioner filed a Motion In Limine requesting the court to "exclude any evidence or testimony by the Defendants (Respondents) of any official or unofficial action or lack of action by the Office of the Attorney General, its agents or employees, relating to the business of check cashing in the State of Mississippi . . . " (CP - 17-22. Quoting from p. 17.) Defendants / Respondents filed a Suggestion of Conflict of Interest and Motion for Counsel to Withdraw on or about March 28, 1995.

During a hearing held on May 12, 1995, arguments of counsel were heard by the Circuit Court, and the pre-arrest conduct of Leslie Staehle and Jean Smith Vaughan, who were now representing the State in its prosecution of this case, was presented to the Circuit Court. The court was informed that these two attorneys, while acting in their official capacities as Special Assistant Attorneys General and other state officials, had represented to Roderick and other agents and representatives of check cashing businesses that check cashing as a business in Mississippi is legal. Further, these same two attorneys were intimately involved in negotiations, conferences and legislative committee meetings regarding proposed legislation to regulate check cashing businesses in Mississippi.

(R - 21-23, 28, 30, 71-73, 83-84, 96, 108-112, 119-121.) According to the record, Special Assistant Attorney General Staehle gave a verbal opinion to the Gulfport Police Department which precipitated the arrests of the Respondents for the same alleged "criminal activity" to which on the other hand she was referring before the legislature as a business activity which should be regulated.

Respondents filed a Motion to Quash and Dismiss Indictment and Demurrer and supporting brief on May 30, 1995. On June 5, 1995, the date set for the trial, a hearing was held on the motion, and three days later the Circuit Court entered its Order dismissing the indictment. (Pet. App. A-31 - A-42.) The Petitioner then appealed the matter to the Mississippi Supreme Court. After briefs were submitted by all parties, the Mississippi Supreme Court affirmed the Circuit Court's order. *State v. Roderick*, 704 So.2d 49, 54-55 (Miss. 1997). Being aggrieved with the decision of the Mississippi Supreme Court, the Petitioner filed its Petition for Writ of Certiorari to which Respondents now reply.

## CORRECTION OF MISSTATEMENTS IN THE PETITION

The Petitioner complains that the Mississippi Supreme Court erred in accepting testimony presented in the Circuit Court regarding the Respondents' efforts to obtain information from the Attorney General's office regarding the law and check cashing business prior to beginning a new venture in this fledgling industry. The testimony clearly established a lack of criminal intent and

was properly offered for that purpose as well as to demonstrate prosecutorial misconduct. The Petitioner, although admitting that meetings occurred and contact was made with various individuals in the check cashing industry, refused to acknowledge its own participation in the Respondents' efforts to follow state law. During the hearing before the Circuit Court undisputed testimony was offered that check cashing is unregulated in Mississippi and that the Attorney General's office met on numerous occasions with representatives of the check cashing industry to formulate proposed regulations for submission to the Legislature. In any case no federal issue exists in regard to the Petitioner's concerns.

The Petitioner has made unsubstantiated and unproven allegations that the Respondents advanced funds for fees up to 900% interest. Testimony before the Circuit Court established that those in the check cashing industry were discounting negotiable instruments and charging a one time fee to cash each check. Again, no federal issue is presented.

Petitioner's argument that the purpose of RICO is to eradicate organized crime implies that the Respondents are involved with organized crime. During briefing before the Mississippi Supreme Court, the Petitioner's numerous references to "loansharking" were made in the State's desperate attempt to raise a stigma of mafia connections and underworld dealing which are nothing short of pathetic. These implications were never raised before the Circuit Court and are not supported by the record, the facts, or the indictment. The record clearly demonstrated the following: (a) Byron Roderick was a respected businessman in Jackson, Mississippi, who has owned and

operated a vacuum cleaner sales and service business for over twenty-two years (R - 17, 109); (b) Billy Saxton is a retired City of Gulfport police officer (R - 16-17); (c) Cynthia Saxton is a therapist in a hospital. (R - 16-17); and (d) "We Cash It" was the first venture by any of these parties in a check cashing business. There is no evidence to support the Petitioner's allegation that these parties have any history of involvement with organized crime. The Respondents would point out, *arguendo*, that if the Respondents are involved with organized crime, then the Attorney General was knowingly meeting with the mafia to regulate and profit by its nefarious activities. Again, there is no federal issue.

The record does not support the Petitioner's claim that Respondents have "claimed to be outside the law" or stated "that no law applied to them." (Pet. - 20.) Since Mississippi has no regulatory guidelines for check cashing businesses, Roderick, along with numerous others in the business, contacted and met with the Attorney General's office to seek guidance and to discuss proposed legislative regulation. Based upon information obtained from the Attorney General's office, and in particular from the very same Special Assistant Attorneys General who are currently prosecuting this matter, the Respondents opened for business. This was only one of many similar check cashing businesses which operated in Mississippi at the time. After the State seized nearly every asset in the business, "We Cash It" ceased operation and went out of business. If Respondents had truly believed that "no law applied to them," they would not have made such a diligent effort to obtain guidance from the State prior to beginning operations. Respondents were advised that

there was no law governing check cashing in Mississippi, but it is clearly improper to attempt to put a cynical spin onto what is a mere statement of fact. Lack of regulation by the State of Mississippi does not confer the specter of illegality upon the industry. Thus, lack of criminal intent is apparent from the record, but this is hardly an issue which this Court should review.

## REASONS FOR DENYING THE WRIT

The Petition for Writ of Certiorari should be denied as no federal question was raised in the courts below and none can be raised here. The validity of the indictment in the instant case is solely dependent upon an interpretation of Mississippi's RICO Act as it applies to Mississippi's civil usury statute as interpreted by Mississippi's Supreme Court. There is no interpretation or application of federal law in the record.

The Mississippi Supreme Court in affirming the lower court's dismissal of the indictment against the Respondents, held that the Mississippi RICO statute as it was applied in this matter to an allegation of usury is unconstitutional in Mississippi as it failed to meet the notice requirements of the Fourteenth Amendment. The Mississippi Supreme Court's finding of unconstitutionality pertains only to that portion of the Mississippi RICO Act which applies to usury as defined under state law.

**1. Review is not required as no federal question was presented in the courts below:**

The Mississippi Supreme Court's decision was a plainly correct analysis of the law of the State of Mississippi. Here there is no conflict between state and federal law or between the decision of the Mississippi Supreme Court and that of any federal court. Petitioners' primary concern distills down to the fact that the Mississippi Supreme Court did not rely upon federal RICO cases when making its analysis of Mississippi RICO and Mississippi's usury statute. In fact, no such reliance is possible in a case based solely on state court interpretation of state usury statutes. Although the wording of Mississippi RICO statutes may be based upon that of the federal RICO statutes, the indictment specifically cites Mississippi RICO. Neither the trial court nor the Mississippi Supreme Court were required to rely upon federal RICO in their interpretation of state law. (Pet. App. - A-48 - A-52.)

The indictment does not cite the Mississippi usury statute which is relied upon by the State as the underlying predicate crime. This would trouble any court, but here there was an obvious reason. It did not cite the only statute applicable to Respondents because it is civil – not criminal in nature. After Respondents were indicted, the Petitioner verbally informed them that the indictment was based upon Mississippi's civil usury statute. The Mississippi Supreme Court wryly noted the "legal gymnastics." *State v. Roderick, supra,* at 54 (Miss. 1997).

Petitioner alleges that the Mississippi Supreme Court misapplied the test for constitutionality set forth in *Connally v. General Construction Co.*, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926), but a review of the Mississippi Supreme Court's decision clearly indicates otherwise. *State v. Roderick, supra*, at 52-55. The Mississippi Supreme Court's decision was a plainly correct application of the *Connally* test to the facts and law in the instant case.

**2. The Mississippi Supreme Court was not required to rely upon case law from other jurisdictions in its analysis of this matter:**

The lower court was asked to determine whether Mississippi RICO was correctly applied to the facts in this particular case, not whether federal RICO or another state's RICO statutes are constitutional or even applicable. The lower court was also asked to determine whether the Respondents were given sufficient constitutional notice that their business activities could be construed as criminal acts forbidden by usury statutes of the State of Mississippi, not by usury statutes of Florida, Ohio, New Jersey, New York, or those of any other state. Although, *arguendo*, RICO state statutes may generally differ little from state to state they do differ, and the usury statutes of each state significantly differ. Some states have criminal usury statutes, but in Mississippi the only criminal statute governs Small Loan Regulatory licensees and even the Petitioner has never charged its applicability to the Respondents. The Petitioner has repeatedly stated that the statute upon which the RICO indictment is based is the civil usury statute.

The case law from other jurisdictions that was cited by Petitioner discussed RICO indictments which were based upon criminal statutes, not a civil statute as exists in Mississippi. The Mississippi Supreme Court specifically addressed this point in its decision:

> Also, all crimes used as bases for a RICO prosecution are outlined in the RICO Act, and there are cross-references between RICO and the underlying criminal statutes. *There do not appear to be any other cases in which Mississippi or any other state has tried to prosecute under RICO with a civil statute as the underlying offense.* [Emphasis added.] No reference to RICO is made in the usury statute or the other statutes on interest and finance charges, other than in the previously discussed § 75-67-119. A person of ordinary intelligence reading the laws governing interest rates, finance charges, and usury would not be given fair warning that usury is a prosecutable offense. *State v. Roderick, supra,* at 54.

**3. The failure of the Mississippi RICO statutes and the indictment to afford due process notice that an activity is criminal.**

Pursuant to case law cited by the Petitioner, "an indictment charging a statutory crime is sufficient if it *substantially follows the language of the criminal statute . . .* " [Emphasis added.] *United States v. Eufrasio,* 935 F.2d 553, 575 (C.A. 3 1991), *cert. denied,* 502 U.S. 925, 112 S.Ct. 340, 116 L.Ed.2d 280 (1991). *See also United States v. Addonizio,* 451 F.2d 49, 58 n. 7 (3d Cir. 1971), *cert. denied,* 405 U.S. 936, 92 S.Ct. 949, 30 L.Ed.2d 812 (1972). In *Eufrasio,* the court stated that the indictment must track the language of the criminal statute in order to allow the defendant adequate knowledge to develop a defense against the charge. *Id.* at

575-576. In the instant case, the indictment against the Respondents did not *cite* any criminal statute other than RICO; it merely refers in the abstract to the civil usury statute.

According to the Petitioner, "[d]ue process will not invalidate a statute if assistance [is] necessary to give the words of the statute a reasonable meaning," one may merely refer to the dictionary for enlightenment. (Pet. - 16.) However, in a criminal matter due process requires notice of the elements of the alleged crime, not just a definition of the word "usury." A penal statute must be sufficiently explicit so as to inform those subject to its mandates that conduct will be penalized. *Huntley v. State*, 524 So.2d 572 (Miss. 1988). *See also Nichols v. City of Gulfport*, 589 So.2d 1280 (Miss. 1991) [Penalties of the law cannot rest upon subjective guidelines, nor can the law subject individuals to penal consequences without first providing sufficiently definite notice of warning of what is prohibited.]

Without a clear understanding of the elements of the underlying predicate crime upon which the RICO indictment is based, the Respondents had no way of knowing with what they have been charged. Since the statute upon which the Petitioner relied for the indictment is a civil usury statute, the Respondents had no way of knowing that their acts could be considered criminal in nature.

Words of a statute or act should be ascribed their ordinary and usual meaning absent legislative guidance to the contrary. *Ahmad v. State*, 603 So.2d 843, 845 (1992), *citing Pearl River Valley Water Supply Dist. v. Hinds County*, 445 So.2d 1330, 1334 (Miss. 1984). The "ordinary and

usual meaning" of a violation of the usury statute relied upon by the Petitioner has been interpreted by the Mississippi Supreme Court as a civil offense not a criminal offense. *See State v. Roderick, supra,* 53-55. Therefore, there was no notice that a violation of the usury statute, if in fact such occurred, was subject to criminal prosecution.

The Petitioner argues that due process does not require a finding that a statute is void for vagueness because the average person must seek legal counsel to interpret the statute. *Citing* 62 Harv. L.R. 77, 78 (1948). Respondents are entitled to notice of the crime with which they have been charged. The requirement of notice is not an attempt to place the Respondents outside the law but to enable them to prepare a defense against the charges contained in the indictment. Testimony and evidence presented during a hearing before the lower court clearly demonstrated that the Respondents and all other individuals interested in establishing check cashing businesses in Mississippi were making every effort to comply with the law. The police had no idea a "crime" was occurring until the Special Assistant Attorney General explained matters. Even the Mississippi Supreme Court has been unable to explain to the Special Assistant Attorney General that no crime ever occurred. Given the confusion of the experts, the vagueness of the statute should be apparent.

**4. The Petitioner's claim that intent is proved by the indictment:**

Petitioner argues that the Mississippi "RICO statute adds an element of 'criminal intent' which must be read

*in pari materi* [sic] and applied to each of the prohibited acts in the statute." (Pet. - 21, para. 2.) The Petitioner relied upon *U.S. v. Aucoin*, 964 F.2d 1492 (5th Cir. 1992), *cert. denied*, 121 L.Ed.2d 587, 113 S.Ct. 661 (1992), to claim that the element of intent is supplied by the indictment itself and argues: "The RICO statute must be construed so as to effectuate the legislative intent to eradicate organized crime. When the language of the statute conveys sufficient definite warning of the proscribed conduct when measured by common understanding and practices, the Constitution requires no more." (Pet. - 22-23, 25.) In *Aucoin*, the jury was instructed that proof of specific intent was required before a defendant could be convicted of the crimes charged, but the court did not hold that one may look to the indictment to establish intent. *Supra*, at 1498. Here, the prohibited act is not contained within those statutes specifically set forth in RICO as prohibited acts but instead is an alleged violation of a civil usury statute, a statute subject exclusively to interpretation by the Mississippi Supreme Court.

"In determining the sufficiency of the notice, a statute must be examined in light of the conduct with which a defendant is charged. The test for vagueness is not whether there are marginal or remote cases in which its clarity may be in doubt, but whether it conveys an adequate warning in a specific situation. *State v. Passante*, 225 N.J. Super. 439, 542 A.2d 952, 956 (1987), *citing Williams v. United States*, 341 U.S. 97, 71 S.Ct. 576, 95 L.Ed. 774 (1951); *U.S. v. Petrillo*, 332 U.S. 1, 67 S.Ct. 1538, 91 L.Ed. 1877 (1947). The *Passante* court stated: " . . . 2C Rico does not make conduct criminal that was not already prohibited

before its enactment. It was intended to serve as a remedial statute, providing enhanced criminal and civil sanctions for conduct *prohibited by existing state and federal law.*" [Emphasis added.] *Passante, supra,* at 957. Here the Petitioner is attempting by invoking RICO to make conduct criminal that is not rendered criminal by state law. Respondents clearly did not have "sufficient definite warning of the proscribed conduct." *See U.S. v. Petrillo, supra.*

According to the Petitioner, the prosecution would never have to prove any defendant's intent because the "intent" would always be established by the use of the term "willful" in the indictment. How can the Respondents prepare a defense if (1) the Petitioner does not have to specify the crime charged, and (2) the Petitioner is allowed to prove intent by the use of terminology such as "willful" in the indictment. Such manipulation of the true meaning of "due process" was surely never envisioned by the makers of the Constitution of the United States and the Constitution of the State of Mississippi. There can be no question that the applicable *mens rea* of the predicate "crime," in this case "usury," is an essential which must be proved by the State.

In *United States v. Biasucci,* 786 F.2d 504, 512 (C.A. 2 1986), *cert. denied,* 479 U.S. 827, 107 S.Ct. 104 (1986) the court stated that since "RICO imposes no *additional* mens rea requirement beyond that found in the predicate crimes" we must "look to the scienter elements found in the statutory definitions of the predicate crimes to determine the degree of knowledge that must be proved to establish a RICO violation." *Id.* at 512. *See also United States v. Pepe,* 747 F.2d 632, 675-76 (C.A. 11 1984); *State v.*

*Thrower*, 62 Ohio App.3d 359, 575 N.E.2d 863, 872 (1989). The court should define the mental state required by the predicate act, i.e., "knowingly" and "willfully." *United States v. Pepe, supra,* at 676. In the instant case, the "predicate crime" is alleged by the Petitioner to be a violation of the civil usury statute of the State of Mississippi, an act in Mississippi which is no "crime" at all.

Respondents could only prepare a defense based upon the charges contained within the indictment. *See also Polakoff v. State of Florida*, 586 So.2d 385 (Fl. 1991). [A count charging a defendant with a state law violation of RICO which defines "an unlawful debt" only by reference to that term in the statute, which itself refers generally to many other statutes relating to many types of illegal usurious debts is invalid, as the information does not directly refer to the usury chapter generally or to a specific usury statute.]

Where a crime consists of an act combined with specific intent, intent is just as much an element of the crime as the act, thus mere general malice or criminal intent is insufficient as an element and specific intent must be shown as a matter of fact, either by direct or circumstantial evidence. *Hydrick v. State*, 150 So.2d 423, 246 Miss. 448 (Miss. 1963).

In Mississippi, in order to establish a *civil* violation of the usury statute Miss. Code Ann. § 75-17-1 (1972), the creditor must intend to commit usurious acts. (App. - 1-2.) *Sunburst Bank v. Keith*, 648 So.2d 1147 (Miss. 1995). However, even if intent is established and it is found that the creditor exceeded the lawful interest rate, forfeiture of

"all interest" is the penalty. *Id.* at 1152. *See also* Miss. Code Ann. § 75-17-5 (1972). (App. - 2.)

## CONCLUSION

Evidence and testimony presented to the lower court demonstrates that the Respondents were involved in a legitimate, though unregulated, business which is a relatively new and growing industry in the State of Mississippi. Testimony established that various individuals contacted the office of the Attorney General regarding the business of "check cashing" in the State of Mississippi and were told that it is legal. (R - 21-23, 71-73, 83-84, 103, 108-112, 119-121, 125-126, 129.) After contacting the office of the Attorney General and various banking and finance officials throughout Mississippi for instructions and advice, the Respondents began operating a "check cashing" business in Gulfport known as "We Cash It." Respondents were then targeted for arrest and caused to be indicted by the same state officials to whom they had turned for advice. Respondents never had any intention of violating the laws of the State of Mississippi, never violated any state or federal law, and have never claimed "to be outside the law" or implied that "no law applied" to them. Respondents made diligent efforts to identify what laws applied to the "check cashing" industry and to abide by those laws.

The Mississippi Supreme Court held that Mississippi's usury statute is clearly civil not criminal, thus no matter how many lawyers review the statute and interpret its wording, the statute has no criminal penalty. The

Petitioner has even admitted that this is so. The decision of the Circuit Court and the Mississippi Supreme Court that the Mississippi RICO statute is void for vagueness as it applies to the facts in the instant case is clearly correct. There are no questions of federal law in this matter, thus this Court does not have jurisdiction to review the judgment on a writ of certiorari. *See Adams v. Robertson*, 117 S.Ct. 1028, 520 U.S. 83, 137 L.Ed.2d 203 (1997). Based upon the foregoing, Respondents respectfully request the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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# APPENDIX

28 U.S.C.A. § 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

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MISS. CODE ANN. (1972) § 75-17-1. Legal rates of interest and finance charges.

(1) The legal rate of interest on all notes, accounts and contracts shall be eight percent (8%) per annum, calculated according to the actuarial method, but contracts may be made, in writing, for payment of a finance charge as otherwise provided by this section or as otherwise authorized by law.

(2) Any borrower or debtor may contract for and agree to pay a finance charge for any loan or other

extension of credit made directly or indirectly to a borrower or debtor which will result in a yield not to exceed the greater of ten percent (10%) per annum or five percent (5%) per annum above the discount rate, excluding any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the lender is located, each calculated according to the actuarial method. The rate of finance charge authorized under this subsection (2) shall be known as the "contract rate."

(3) Notwithstanding the foregoing and any other provision of law to the contrary, any partnership, joint venture, religious society, unincorporated association, or domestic or foreign corporation, whether organized for profit or nonprofit, may contract for and agree to pay a finance charge which will result in a yield not to exceed the greater of fifteen percent (15%) per annum or five percent (5%) per annum above the discount rate, excluding any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the lender is located, each calculated according to the actuarial method, on any contract, loan, extension of credit or other obligation under which the principal balance to be repaid shall originally exceed Two Thousand Five Hundred Dollars ($2,500.00), or on any series of advances of money pursuant to a contract if the aggregate of sums advanced or originally proposed to be advanced shall exceed Two Thousand Five Hundred Dollars ($2,500.00); and as to any such agreement, the claim or defense of usury by such partnership, joint venture, religious society, unincorporated association, or

corporation, or their successors, guarantors, assigns or anyone on their behalf is prohibited.

(4) Notwithstanding the foregoing and any other provision of law to the contrary, any borrower or debtor may contract for and agree to pay a finance charge which will result in a yield not to exceed the greater of ten percent (10%) per annum or five percent (5%) per annum above the index of market yields of the Monthly Twenty-Year Constant Maturity Index of Long-Term United States Government Bond Yields, as compiled by the United States Treasury Department, each calculated according to the actuarial method, on any loan, mortgage or advance which is secured by a lien on residential real property or by a lien on stock in a residential cooperative housing corporation where the loan, mortgage or advance is used to finance the acquisition of such stock. The term "residential real property," as used in this subsection, means real estate upon which there is located or to be located a structure or structures designed in whole or in part for residential use, or which comprises or includes one or more apartments, condominium units or other dwelling units.

(5) Notwithstanding the foregoing and any other provision of law to the contrary, any borrower or debtor may contract for and agree to pay and any lender or extender of credit may contract for and receive any finance charge agreed to in writing by the parties, notwithstanding that such charge is in excess of that otherwise allowed on any contract, credit sale, obligation or other extension of credit, regardless of the security taken or the purpose of the extension of credit, under which the principal balance to be repaid originally exceeds Two

Thousand Dollars ($2,000.00), or on any series of advances of money pursuant to a contract if the aggregate of sums advanced or originally proposed to be advanced exceeds Two Thousand Dollars ($2,000.00), or on any extension or renewal thereof; and as to any such agreement, the claim or defense of usury or violation of any law prescribing, limiting or regulating the rate of finance charge by any borrower or debtor, or his successors, guarantors, assigns or anyone on his behalf is prohibited.

This subsection (5) shall stand repealed on July 1, 2001.

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MISS. CODE ANN. (1972) § 75-17-5. Discount, interest, bank issues.

The issues, bills, notes, bonds, or certificates of deposit of any bank, corporation, or association of persons formed for banking purposes, or possessing banking privileges, situated within or without the limits of this state, shall not be loaned in this state by any agent, officer or person employed by, or having any interest in or connection with, any such bank, corporation, or association of persons, at a greater rate of discount or interest than is allowed by the laws of this state. All contracts and agreements made in violation of the provisions of this section shall, as to the whole of the discount or interest allowed or paid, or agreed to be allowed or paid, be void, and the discount or interest may be recovered back by the person suffering such discount or paying such interest.

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